

10-18-05

DRE
1/6/97W

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Herron et al.

Serial No.: 09/877,635

Filed: June 8, 2001

For: DIAGNOSTIC DEVICE AND
METHOD

Confirmation No.: 9774

Examiner: A. Lam

Group Art Unit: 1641

Attorney Docket No.: 0274.02-3278.2US
(U-2541.2)

NOTICE OF EXPRESS MAILING

Express Mail Mailing Label Number: EL995991149US

Date of Deposit with USPS: October 17, 2005

Person making Deposit: Steve Wong

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
PURSUANT TO 37 C.F.R. §1.181

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition the Commissioner of Patents and Trademarks to invoke the supervisory authority of the Commissioner, pursuant to 37 C.F.R. §1.181, to withdraw the Office's holding of abandonment in the above-captioned patent application.

Statement of Facts and Points to be Reviewed

On **October 4, 2004**, the Patent Office mailed a Non-Final Rejection in the above-captioned patent application. On **January 7, 2005**, Applicants responded, by First Class Mail, by filing an Amendment. The response was then entered into the record.

Applicants then, based on the docket system, made inquiry into the status of the case by means of the Patent Application Information Retrieval (PAIR) system and determined that on **January 25, 2005**, a Notice of Informal or Non-Responsive Amendment had been mailed. However, this notice was never received by Applicants attorney.

Enclosed is a copy of a docket report for the above-referenced application. The Matter ID listed on the docket sheet is indicated as 0274.02-3278.2US which corresponds to U.S. Application 09/877,635. The docket record indicates that the Notice of Non-Compliant Amendment was never docketed. Had the notice been received, it would have been entered as received and would have been docketed. I hereby certify that the notice was not received and that the file jacket and docket records were searched indicating lack of receipt of the same.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Applicants respectfully submit that this petition is timely filed, as the Notice of Abandonment was mailed by the Patent Office on September 27, 2005, and Applicants have filed this petition within two months of the mailing date of the Notice of Abandonment.

No fee for this petition to the Commissioner is required under 37 C.F.R. 1.181(d), as indicated by MPEP §711.03(c).

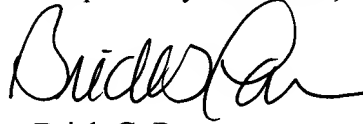
Relief Requested

In the present situation, Applicants filed an Amendment by the deadline and did not receive subsequent Notice of Non-Compliant Amendment. Accordingly, the holding of

Serial No. 09/877,635

abandonment by the Office is inappropriate and in error, and should be withdrawn, prosecution of this matter before the Examiner be reopened and an Office Action or Notice of Allowance be issued in a timely manner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brick G. Power", written in a cursive style.

Brick G. Power

Registration No. 38,581

Attorney for Applicants

TRASKBRITT

P.O. Box 2550

Salt Lake City, Utah 84110-2550

Telephone: 801-532-1922

Date: October 17, 2005

BGP/dlm:eg

Document in ProLaw

Events Docket Report

Matter ID contains '3278.2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort
Matter Description

Attorney

Event Date

Type

Notes

Initials: ACT

0274.02-3278.2US Biocentrex, LLC.	ACT BGP	8/8/2001	R-Info.	R-Info. disclosure reminder
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	8/8/2001	R-Preliminary	R-Preliminary Amendment Due in 1 month
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	9/8/2001	S-Info.	S-Info. disc due; Receipt rvd? If not, inquire
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	9/8/2001	R-Prepare	R-Prepare Formal Drawings
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	9/8/2001	R-Preliminary	R-Preliminary Amendment Due
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	6/7/2002	S-Foreign	S-Foreign convention deadline
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	8/19/2002	US Office	PTO office action - 1 month response Trigger: Receipt of 1 month Office Action Base Date: Office Action mailing date
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	9/8/2002	R-Do	R-Do status request if no office action
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	9/8/2002	R-Office	R-Office Action Response Due in 10 DAYS
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	9/19/2002	D-Office	D-Office Action Response Due to avoid extension
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	10/19/2002	D-Office	D-Office Action Response due with 1 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	11/19/2002	D-Office	D-Office Action Response due with 2 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	12/19/2002	D-Office	D-Office Action Response due with 3 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	1/19/2003	D-Office	D-Office Action Response due with 4 mo ext

Events Docket Report

Matter ID contains '3278.2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort Matter Description	Attorney		Event Date	Type	Notes
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	1/31/2003	US Office	PTO office action - 1 month response Trigger: Receipt of 1 month Office Action Base Date: Office Action mailing date
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	2/19/2003	S-Office	S-Office Action Response due with 5 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	2/20/2003	R-Office	R-Office Action Response Due in 10 DAYS
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	2/28/2003	D-Office	D-Office Action Response Due to avoid extension
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	3/19/2003	R-Further	R-Further O/A or NOA? If not, inquire
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	3/28/2003	D-Office	D-Office Action Response due with 1 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	4/28/2003	D-Office	D-Office Action Response due with 2 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	5/28/2003	D-Office	D-Office Action Response due with 3 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	6/28/2003	D-Office	D-Office Action Response due with 4 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	7/28/2003	S-Office	S-Office Action Response due with 5 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	7/29/2003	US Office	PTO office action - 3 month response Trigger: Receipt of 3 month Office Action Base date: Office Action mailing date
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	8/31/2003	R-Further	R-Further O/A or NOA? If not, inquire
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	9/29/2003	R-Office	R-Office Action Response Due in ONE MONTH

Events Docket Report

~~Matter ID contains '3278.2' and not ((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))~~

Matter ID/Client Sort Matter Description	Attorney		Event Date	Type	Notes
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	10/29/2003	D-Office	D-Office Action Response Due to avoid extension
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	11/29/2003	D-Office	D-Office Action Response due with 1 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	12/29/2003	D-Office	D-Office Action Response due with 2 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	1/29/2004	S-Office	S-Office Action Response due with 3 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	2/9/2004	US Final	PTO Final Office Action Trigger: Receipt of PTO notice Base Date: Mailing Date
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	3/9/2004	R-Final	R-Final Office Action due in TWO MONTHS
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	4/9/2004	D-Final	D-Final Office Action - EARLY response due
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	4/29/2004	R-Further	R-Further O/A or NOA. If not, inquire
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	5/9/2004	D-Final	D-Final Office Action Response Due to avoid ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	5/31/2004	R-Rcvd	R-Rcvd further action to Final? If not, inquire
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	6/9/2004	D-Final	D-Final Office Action Response due with 1 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	7/9/2004	D-Final	D-Final Office Action Response due with 2 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	8/9/2004	S-Final	S-Final Office Action Response due with 3 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	10/4/2004	US Office	PTO office action - 3 month response Trigger: Receipt of 3 month Office Action Base date: Office Action mailing date

Events Docket Report

Matter ID contains '3278.2' and not ((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort Matter Description	Attorney	Event Date	Type	Notes
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	12/4/2004	R-Office	R-Office Action Response Due in ONE MONTH
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	1/4/2005	D-Office	D-Office Action Response Due to avoid extension
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	2/4/2005	D-Office	D-Office Action Response due with 1 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	3/4/2005	D-Office	D-Office Action Response due with 2 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	4/4/2005	S-Office	S-Office Action Response due with 3 mo ext
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	7/4/2005	R-Further	R-Further O/A or NOA. If not, inquire

Events Docket Report

Matter ID contains '3278.2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort
Matter Description

Attorney

Event Date

Type

Notes

Initials: BL

0274.02-3278.2US
Biocentrex, LLC.

ACT

BGP

10/4/2004

PTO LOG

RECEIVED 3 MONTH OFFICE
ACTION ENCLOSING FORM
892 WITH I US PATENT (RCVD
10/06/2004)

Events Docket Report

Matter ID contains '3278.2' and not ((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort
Matter Description

Attorney

Event Date

Type

Notes

Initials: CJS

0274.02-3278.2US Biocentrex, LLC.	ACT BGP	7/29/2003	PTO LOG	RECEIVED THREE MONTH OFFICE ACTION ENCLOSING FORM 892 WITH 4 US REFERENCES
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	10/29/2003	PTO LOG	TRANSMITTAL FORM; AMENDMENT IN RESPONSE TO Office Action DATED JULY 29,2003. DP/BGP PTO 11/3/03 T B 11/7/03
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	2/9/2004	PTO LOG	RECEIVED FINAL THREE MONTH OFFICE ACTION ENCLOSING FORM 892 WITH 1 US REFERENCE
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	4/9/2004	PTO LOG	TRANSMITTAL FORM; AMENDMENT UNDER 37 CFR 1.116 IN RESPONSE TO FINAL Office Action DATED FEBRUARY 9, 2004. DP/BGP PTO 4/9/04 T B 4/19/04
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	6/7/2004	PTO LOG	RECEIVED ADVISORY ACTION RCVD 6/9/04
0274.02-3278.2US Biocentrex, LLC.	ACT BGP	7/1/2004	PTO LOG	REQUEST FOR CONTINUED EXAMINATION TRANSMITTAL PETITION FOR EXTENSION OF TIME UNDER 37 CFR; CHECK NO 6313 AND 6314 IN THE AMOUNTS OF \$385.00 AND \$210.00, RESPECTIVELY. PS;RH/BGP PTO 7/01/2004 T B 7/08/2004

Events Docket Report

~~Matter ID contains '3278.2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))~~

**Matter ID/Client Sort
Matter Description**

Attorney

Event Date

Type

Notes

Initials: FCB

0274.02-3278.2US
Biocentrex, LLC.

ACT

BGP

9/27/2005

PTO LOG

RECEIVED NOTICE OF
ABANDONMENT (RCVD 9/29/05)

Events Docket Report

Matter ID contains '3278:2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort
Matter Description

Attorney

Event Date

Type

Notes

Initials: LJB

0274.02-3278.2US
Biocentrex, LLC.

ACT

BGP

8/19/2002

PTO LOG

RECEIVED ONE MONTH
OFFICE ACTION

Events Docket Report

~~Matter ID contains '3278.2' and not ((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))~~

Matter ID/Client Sort
Matter Description

Attorney

Event Date

Type

Notes

Initials: LS

0274.02-3278.2US
Biocentrex, LLC.

ACT BGP

6/8/2001

PTO LOG

UTILITY PATENT APPLICATION
TRANSMITTAL; FEE
TRANSMITTAL; CHECK NO
16629 IN THE AMOUNT OF
\$440.00; SPECIFICATION;
DRAWINGS; DECLARATION;
Information Disclosure
Statement; AND FORM
PTO-1449; LE; 06/19/2001

0274.02-3278.2US
Biocentrex, LLC.

ACT BGP

7/12/2001

PTO LOG

RECEIVED FILING RECEIPT

0274.02-3278.2US
Biocentrex, LLC.

ACT BGP

10/22/2001

PTO LOG

RECEIVED NOTICE OF
PUBLICATION OF
APPLICATION

Events Docket Report

Matter ID contains '3278.2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort Matter Description	Attorney		Event Date	Type	Notes
Initials: RMH					
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	11/19/2002	PTO LOG	TRANSMITTAL FORM; RESPONSE TO RESTRICTION REQUIREMENT AND PRELIMINARY AMENDMENT; PETITION FOR EXTENSION OF TIME; CHECK NO 3344 IN THE AMOUNT OF \$200.00; D J P;12/2/02
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	1/31/2003	PTO LOG	RECEIVED ONE MONTH OFFICE ACTION
0274.02-3278.2US Biocentrex, LLC.	ACT	BGP	3/5/2003	PTO LOG	TRANSMITTAL FORM; RESPONSE TO RESTRICTION REQUIREMENT MAILED JANUARY 31, 2003; PETITION FOR EXTENSION OF TIME; CHECK NO 3890 IN THE AMOUNT OF \$55.00; L J B;PTO-3/11/03; T B-3/18/03

Events Docket Report

Matter ID contains '3278.2' and not((Event Type contains 'letter' or Event Type contains 'postcard' or Event Type contains 'fax' or Event Type contains 'pf' or Event Type contains 'pl' or Event Type contains 'attached'))

Matter ID/Client Sort
Matter Description

Attorney

Event Date

Type

Notes

Initials: SPW

0274.02-3278.2US
Biocentrex, LLC.

ACT

BGP

1/4/2005

PTO LOG

TRANSMITTAL FORM (IN
DUPLICATE); AMENDMENT IN
RESPONSE TO OFFICE
ACTION DATED OCTOBER 4,
2004
BGP/RMH
PTO 1/4/2005 T B 1/12/2005

0274.02-3278.2US
Biocentrex, LLC.

ACT

BGP

2/22/2005

PTO LOG

SUPPLEMENTAL
INFORMATION DISCLOSURE
STATEMENT (2 PAGES);
CHECK NO. 7424 IN THE
AMOUNT OF \$180.00; FORM
PTO/SB/08A AND COPY OF
CITED REFERENCES.
BGP/DP:RMH
PTO 2/25/2005 T B 3/7/2005